

IN THE HIGH COURT OF GUJARAT
AHMEDABAD

CIVIL REVISION APPLICATION NO.112 OF 1996

Date of Decision: 23 January, 1996

For Approval and Signature:

Hon'ble Mr. Justice : S.D. SHAH

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substa..

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question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Mr. A.D. Padiwal, Advocate for petitioner
Mr. H.J. Shah, Advocate for respondents

Coram: S.D. SHAH, J.

Date : 23 January, 1996

ORAL JUDGMENT:

1. RULE. Mr. H.J. Shah, learned Counsel appearing for the respondents waives service of rule on behalf of the respondents. With the consent of the learned advocates appearing for the parties, the matter is

finally heard and disposed of today.

2. A Notification is issued by the Ministry of Surface Transport dated 1st December, 1995 under sub-sections 3 and 4 of Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948. By such notification, the Central Government has appointed certain members of the Kandla Dock Labour Board constituted under sub-section 1 of Section-5A. Firstly it has nominated five members representing the Central Government. Secondly, it has appointed members representing the dock workers. First three members are appointed as representatives of Kandla Port Karmachari Sangh, one of them being K.H. Kannad, who is the present petitioner before this Court. After issuance of such notification, the first meeting of the Board was convened on 28th December, 1995 during noon time. Notice to that effect was issued prior thereto and that notice was of seven days and on that very date the notice was served. The respondent plaintiff instituted the suit in question in the Court of Civil Judge (JD), Kutch, Bhuj, who by total non-application of mind and not realising that the order of the Central Government was being challenged before him, proceeded to pass the order of injunction on 28th December, 1995 so as to restrain the present petitioner from participating in the meeting as member of the Board. To say the least, the order passed by the trial court was in every sense without jurisdiction, was perverse and highly unreasonable and unjudicious. He did not apply his mind at all to the fact that the plaintiffs have approached the Court at the last moment i.e. exactly at the time the meeting was scheduled to start. He also did not apply his mind to the fact that whether he has jurisdiction or not. He did not ask a question to himself as to whether he can stay the notification issued by the Central Government in absence of Union of India being impleaded as party. In the opinion of this Court, in fact, explanation of that Judge is required to be called for and the matter is ordered to be placed before the Hon'ble Acting Chief Justice to take decision as to why the action should not be taken against the concerned Civil Judge (JD), Kutch, Bhuj.

3. To add to the agony of the present petitioner, the Civil Misc. Appeal No. 248 of 1995 which was filed against the ex parte order passed by the trial court, was decided by the Extra Assistant Judge, Kutch Bhuj, whereby he has dismissed the appeal and has continued the injunction granted by the Civil Judge (JD) till Exhibit-5 application is finally heard by him. The Extra Assistant Judge has also failed to ask question to himself as to

how the suit against the notification issued by Union of India was maintainable in the Court of Civil Judge (JD). He has also not asked the question as to why the plaintiff has approached the court at the last minute when the meeting was to be convened. What prevented the plaintiff from coming to the court earlier is nowhere stated and nowhere discussed by the learned Extra Assistant Judge. He also forgot to note that the effect of such order is to render ineffective and non-operative the notification issued by the Central Government under the Central Law. To say the least, the order of the Extra Assistant Judge shows total non-application of mind on his part and suffers from perversity, impropriety and unreasonableness. In fact, he has abdicated his jurisdiction to pass just and proper order which he ought to have passed. The order of the learned Extra Assistant Judge is required to be quashed and set aside and is hereby quashed and set aside. The order of the learned trial judge granting temporary injunction for seven days is also quashed and set aside. The petitioner shall work as the Member of the Board till the original plaintiff either amends the plaint, and if such amendment is permissible in accordance with law, the trial court shall decide or till the original plaintiff resorts to any other remedy available to them in law. No order of injunction against the present petitioner shall be passed till notice is issued to the Union of India and Union of India is served and it files its reply to the proceeding. Rule is accordingly made absolute. No costs.
